



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTON  
ATTORNEY GENERAL

October 17, 1990

Mr. Mercedes Leal  
Assistant County Attorney  
Harris County  
1001 Preston, Suite 634  
Houston, Texas 77002

OR90-502

Dear Mr. Leal:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your original request was assigned ID# 8315. Your additional correspondence of March 22, 1990, has been assigned ID# 9191.

Your request was partially disposed of by letter ruling OR90-096. This ruling is in reference to the remaining exhibits submitted for our review under section 7 of the Open Records Act. These exhibits are designated "B" and "G."

We have considered the exceptions you claimed, specifically sections 3(a)(1), (2), (8), (11), and (17), and have reviewed the documents at issue. The documents submitted for our review contain information regarding closed investigations conducted by the internal affairs division of the Harris County Sheriff's Department.

With respect to your claim under section 3(a)(8), you assert that the release of the requested information will unduly interfere with law enforcement by (1) impairing the willingness of witnesses to cooperate with investigations and (2) disclosing internal investigative tactics to the public.

With respect to the argument regarding the future ability of the internal affairs division to obtain witness cooperation, you are, in effect asserting that witness statements are excepted from disclosure under the informer's privilege. The statements in question were made by public officers and employees to the internal affairs division of the Harris County Sheriff's Department in connection with an internal investigation. Section 3(a)(1) excepts from disclosure information deemed confidential by constitutional or statutory law or judicial decision. The informer's privilege is a well-established section 3(a)(1) exception to the general rule requiring disclosure and has been

recognized by this office in numerous published opinions. See e.g., Open Records Decision Nos. 515 (1988); 279 (1981) (and authorities cited therein).

The informer's privilege serves to encourage the flow of information to the government by protecting the identity of the informer. If the contents of the informer's statement would tend to reveal the identity of the informer, the privilege protects the statement itself to the extent necessary to preserve the informer's anonymity. Moreover, the basis for the informer's privilege is to protect informers from the fear of retaliation and thus encourage them to cooperate with law enforcement efforts. Id.

Neither cases nor opinions have extended the informer's privilege to protect the identities of public employees making statements about the routine conduct of the business of government. Furthermore, the policy underlying the informer's privilege does not support extending the privilege to cover statements such as these made by public employees about public business. Accordingly, statements by sheriff's or constable's deputies may not be withheld under the asserted exception. However, statements made by cooperating civilians may be withheld to the extent necessary to protect the identity of the informant.

With respect to the assertion regarding the disclosure of internal investigative techniques, you note that the documents contain activity logs and lists of persons interviewed. However, you do not explain, nor is it apparent on the face of the documents how the release of this information will reveal any unobvious strategies or otherwise enable a wrongdoer to thwart an investigation. See Open Records Decision No. 531 (1989).

You assert that criminal history reports are excepted under section 3(a)(8). Compilations of criminal history information concerning an individual, such as printouts obtained from TCIC or NCIC (so called "rap sheets"), are confidential. Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); see also, Open Records Decision No. 565 (1990). Such information in exhibit "B" must be withheld. No such reports are apparent in exhibit "G."

Finally, you assert that offense reports should be withheld under section 3(a)(8). However, these are closed files, and you do not explain how the release of the requested information will unduly interfere with law enforcement. Open Records decision No. 216 (1978).

You assert that certain material is protected from disclosure by section 3(a)(11) of the act. You assert that

the indicated material contains advice, opinion and recommendation so inextricably entwined with references to the factual matters at issue that they fall within the exception for inter- and intra-agency memoranda. Section 3(a)(11) of the act was intended to protect from disclosure to the public advice, opinion, and recommendation used in the decision-making process within an agency or between agencies. See, e.g., Open Records Decision No. 549 (1990). The purpose of the protection is to foster open and frank discussion in the deliberative process. Information that is purely factual may not be withheld under section 3(a)(11). Open Records Decision No. 450 (1986). We have reviewed the information submitted as agency memoranda and have determined that the material must be disclosed because it is objective observation of fact.

With respect to claims regarding common-law privacy under sections 3(a)(1) and (2), none of the material in exhibits "b" or "g" appears to meet the test for exception under Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976) cert. denied, 430 U.S. 930 (1977), that it reveal highly intimate or embarrassing facts about a person's private affairs and be of no legitimate concern to the public. See also, Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546 (Tex. App. - Austin 1983, writ ref'd, n.r.e.).

In summary, you may withhold compilations of criminal history information, the names of civilian informants and the statements of such informants to the extent necessary to protect their identities. The remaining information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-502.

Yours very truly,

  
John Steiner  
Assistant Attorney General  
Opinion Committee

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Ref.: ID# 9191, 8315 (OR90-096)

Enclosure: Documents Submitted